within the meaning of section 30(1) of the Election Offences Ordinance for his failure to transmit to the proper officer within the prescribed time a return and declaration regarding his election expenses, and I made the order accordingly.

*Order accordingly.*

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## CHUNG KHIAW BANK LTD. v. FOUR SEAS COMMUNICATIONS BANK LTD.

**[O.C.J. (Ambrose J.) March 31, 1965]**

**[Singapore — Suit No. 427 of 1963]**

*Company Law — Shares — Equitable mortgage of — Notice — Priority — Lien on shares in respect of debt incurred after notice — Companies Ordinance (Cap. 174), ss. 96 and 102.*

The sole issue in this case is whether the defendant company is entitled to disregard notice of an equitable mortgage of shares in the defendant company made by the registered holder in favour of the plaintiff and to claim priority under its articles for its lien on the shares in respect of a debt incurred by the registered holder after the notice.

**Held:** the defendant company is not entitled to disregard notice of the equitable mortgage of shares in the defendant company made by the registered holder in favour of the plaintiff, and to claim priority under its articles for its lien on the shares in respect of a debt incurred by the registered holder after the notice.

*Cases referred to:—*

(1) *Bradford Banking Co.* v. *Briggs* (1886), 12 App. Cas. 29.

(2) *Hopkinson* v. *Rolt* (1861), 9 H.L.C. 514.

(3) *Rearden* v. *Provincial Bank of Ireland*, [1896] 1 Ir.R. 572.

(4) *Dearle* v. *Hall* (1826), 3 Russ. 1 at p. 12.

(5) *Rainford* v. *James Keith & Blackman Co.*, [1905] 2 Ch. 147 at p. 161.

(6) *Mackereth* v. *Wigan Coal & Iron Company Limited*, [1916] 2 Ch. 293.

(7) *New London & Brazilian Bank* v. *Brocklebank* (1882), 21 Ch. D. 302.

CIVIL SUIT.

*C. F. J. Ess* for the plaintiff.

*T. H. A. Potts* for the defendant.

*Cur. Adv. Vult.*

**Ambrose J.:** The sole issue in this case is an issue of law. It is whether the defendant company is entitled to disregard notice of an equitable mortgage of shares in the defendant company made by the registered holder in favour of the plaintiff, and to claim priority under its articles for its lien on the shares in respect of a debt incurred by the registered holder after the notice.

The relevant facts are not disputed and are as follows. The defendant company was originally known as Sze Hai Tong Banking and Insurance Company Limited. By a special resolution passed on the 29th May, 1957, it changed its name to Sze Hai Tong Bank Limited. By a further special resolution passed on the 29th July, 1964 it changed its name to Four Seas Communications Bank Limited. Lam Joo Chong (whom I will call Lam) was a member of the defendant company. On the 2nd February, 1957, Lam deposited with the plaintiff a certificate of 225 shares in the defendant company, which were registered in his name, as security for repayment of all sums advanced to him by the plaintiff on his current account. And on the same day the plaintiff gave the defendant due notice in writing of the security. On the 4th February, 1957, the defendant replied to the plaintiff claiming a first and paramount lien upon the shares under article 25 of its articles of association. On the 29th July, 1957, Lam deposited with the plaintiff as further security a further certificate of 225 shares in the defendant company which were registered in his name.

On the 4th November, 1959, Lam guaranteed in writing the account of Paramount Traders Ltd. with the defendant. Lam was a shareholder and director of Paramount Traders Ltd. On the 17th May, 1962, the defendant gave written notice to Lam requiring him to pay the sum of $80,000 pursuant to his guarantee and stating that, in the event of his failing to pay the required sum within ten days, the 450 shares deposited with the plaintiff would be sold by the defendant, together with 112 bonus shares to which Lam was entitled. Subsequently the defendant sold the shares and bonus shares.

Article 25 of the articles of association of the defendant company provides as follows:

"The Company shall have a first and paramount lien upon all the shares registered in the name of a member (whether solely or jointly with others), and upon the proceeds of sale thereof, for all calls upon such shares, and also for all debts, obligations, engagements and liabilities of such member, solely or jointly with any other person, to or with the Company, whether the period of the payment, fulfilment, or discharge thereof shall have actually arrived or not; and such lien shall extend to all dividends from time to time declared on such shares, and shall have priority over all debts, obligations, engagements and liabilities of such member to or with any other person, notwithstanding that any such last mentioned debt, obligation, engagement or liability was incurred or undertaken prior in date to any debt, obligation, engagement or liability to or with the Company in respect of which it may claim to exercise the lien conferred on it by this Article, and notwithstanding that the Company had full notice thereof."

Counsel for the plaintiff cites *Bradford Banking Co.* v. *Briggs*,[1] for the proposition that a company is not entitled to disregard notice of an equitable mortgage of shares in the company and to claim priority for its lien under its articles in respect of a debt incurred after the notice. In that case the facts were these. Article 103 of the articles of association of the

defendant company provided as follows:

"The company shall have a first and permanent lien and charge, available at law and in equity, upon every share of every person who is the holder or one of the several joint holders thereof, for all debts due from him, either alone or jointly with any other person, whether a shareholder or not in the company."

A shareholder deposited his certificates of shares in the defendant company with the plaintiff bank as security for the balance due and to become due on his current account. The bank gave the defendant company notice of the deposit. The certificates stated that the shares were held subject to the articles of association of the defendant company. It was held by the House of Lords, reversing the decision of the Court of Appeal, that, as regards moneys which became due from the shareholder to the defendant company after notice of the deposit of the share certificates with the bank, the defendant company could not claim priority over advances made by the bank after such notice; but that the principle of *Hopkinson* v. *Rolt* [2] applied. This principle may be stated thus: a first mortgagee, whose mortgage was taken to cover what was then due and also future advances within a fixed amount, could not claim to be repaid such advances in priority to a second mortgagee, of whose mortgage he had notice at the time when he made them. It was also held by the House of Lords, reversing the decision of the Court of Appeal, that the notice to the defendant company of the deposit of the share certificates with the bank was not a notice of a trust within the meaning of section 30 of the Companies Act, 1862; and that the bank by giving notice of the deposit did not seek to affect the defendant company with notice of a trust, but only to affect the defendant company in their capacity as traders with notice of the interest of the bank.

Section 30 of the Companies Act, 1862, provides:

"No notice of any trust expressed, implied or constructive, shall be entered on the register or receivable by the registrar in the case of companies under this Act and registered in England or Ireland."

Here I must refer to a case which was not cited to me, namely, *Rearden* v. *Provincial Bank of Ireland.* [3] There Palles C.B. (at page 575) expresses the view that the immunity from taking notice of trusts conferred by this section upon the company is, by its very words, limited to the company acting in the discharge of its statutory duty in relation to the register, such as its duty to register transfers when presented to it in order. He also expresses the view (at page 577) that in expressly forbidding the company to recognise a trust the section impliedly protects the company against liability for obeying the prohibition. He also expresses the view (at page 577) that the liability intended to be provided against by the section was that which arose from the application to companies of the principle laid down by Sir Thomas Plumer M.R. in *Dearle* v. *Hall* [4] at page 12. Sir Thomas Plumer's words are as follows:

"Where a contract, respecting property in the hands of other persons, who have a legal right to the possession, is made behind the back of those in whom the legal interest is thus vested, it is necessary, if the security is intended to attach on the thing itself, to lay hold of that thing in the manner in which its nature permits it to be laid hold of — that is, by giving notice of the contract to those in whom the legal interest is. By such notice, the legal holders are converted into trustees for the new purchaser, and are charged with responsibility towards him."

Palles C.B. goes on to say (at page 578):

"In applying this doctrine it is to be observed that although the legal interest in shares in a company constituted under the Act is not vested in the company itself, yet such company, by reason of its duties in relation to the register, is a necessary party to every transfer of such legal interest, and but for the section in question it would possibly have been held, by the application of the doctrine of *Dearle* v. *Hall*, that the company was a trustee of its power of registration for persons having equitable interests of which it had notice, and, in my opinion, the object and effect of section 30 is to prevent such an obligation attaching to these companies."

What was the *ratio decidendi* of *Bradford Banking Co.* v. *Briggs*? Lord Blackburn says (at page 38):

"I think that in order to bring this case within the principle of *Hopkinson* v. *Rolt*, it is not necessary to establish any trust as against the company. It is, I think, enough to shew that the company, a trading one, had by its agents who managed its trading transactions such knowledge that their customer Easby had ceased to be the owner of the shares as would have made it unjust to allow him credit on the faith of that property, which had once been his, but which he had parted with before they were asked to allow him to incur the debt for which they now seek priority.

The legislature are competent to enact that a trading company of this sort should have the right to disregard the ordinary rules of justice, and charge what they knew was one man's property with another man's debt, but I do not think it possible to construe section 30 as an enactment to that effect. . . .

I do not think that the appellants in this case seek to affect the respondents with a trust; they seek no more than to affect them, in their capacity of traders, with knowledge of their (the appellants') interest."

Lord Halsbury L.C. says (at page 32) he concurs in the conclusion at which Lord Blackburn arrived and in the reasons upon which it was founded. Lord Fitzgerald says (at page 40):

"I cannot agree that the notice had no operation. It may not have affected the company with any trust in favour of the pledgees, but it was a valid and operative intimation to the company that the whole beneficial interest of the shareholder had been pledged to the bank."

As regards the *ratio decidendi* of *Bradford Banking Co.* v. *Briggs*, Palles C.B. has this to say in *Rearden* v. *Provincial Bank of Ireland*, at pages 578, 579 and 580:

"That decision was founded . . . . upon the principle that the relief there sought by the bank was not the enforcement of a trust. This *ratio decidendi* involved this, that the ground of the jurisdiction there was unconscientious conduct; and that, although the fact that the defendants had notice of the trust was a material fact in rendering their conduct unconscientious, they were not, by reason thereof, protected by the 30th section.

. . . . . .

The *ratio decidendi*, therefore, was that although the 30th section was a provision negativing an obligation to take notice of the trust, it did not afford protection from a liability different in kind from the liability against which it was enacted that immunity should be afforded."

I accept the views of Palles C.B. as to the *ratio decidendi* of *Bradford Banking Co.* v. *Briggs*. In my opinion, the *ratio decidendi* may be stated thus: notice of an equitable interest in shares will not convert a company in which the shares are held into a trustee of its power of registration under section 30 of the Companies Act, 1862, for the person having the equitable interest, but the notice will affect the company in its character as a trader if it enters into a business transaction involving the shares. As was said by Stirling L.J. in *Rainford* v. *James Keith and Blackman Co.*,[5] at page 161:

"Where the company in which the shares are held sees fit to deal with the shares for its own benefit, then that company is liable to be affected with notice of the interest of a third party."

Counsel for the defendant company in the case before me makes the following submission: the case of *Bradford Banking Co.* v. *Briggs* was decided on the construction of article 103 of its articles of association; it did not decide that there was an inflexible rule of equity making it impossible, by the articles, to exclude the application of the rule in *Hopkinson* v. *Rolt;* the House of Lords carefully considered the articles of association and held that they did not attempt to relieve the company from noticing equities and did not show any intention to exclude the rule; articles 4 and 25 in the present case show such an intention.

It is necessary to stress that the decision in *Bradford Banking Co.* v. *Briggs* was based not only on article 103 of the articles of association of the defendant company but also on section 30 of the Companies Act, 1862. It is also necessary to state here that section 102 of the Companies Ordinance (Cap. 174), which was not referred to by either counsel, corresponds to this section, and also to section 27 of the Companies (Consolidation) Act, 1908, section 101 of the Companies Act, 1929, and section 117 of the Companies Act, 1948. Section 102 of the Companies Ordinance provides:

"No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the Registrar."

I must add that "register" in this section means the book or books which section 96 of the Ordinance requires to be kept by every company. And "Registrar" means the Registrar of Companies. In construing section 102 of the Companies Ordinance, I adopt the views of Palles C.B. as regards section 30 of the Companies Act, 1862, which are set out above. In particular, I hold that the object and effect of section 102 of the Companies Ordinance is to prevent notice of equitable interests in shares from converting a company in which the shares are held into a trustee of its power of registration for the persons having the equitable interests.

I must now consider the effect of article 4 of the articles of association in the present case. It reads as follows:

"Save as herein otherwise provided, the Company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not, except as ordered by a Court of competent jurisdiction or as by statute or ordinance required, be bound to recognise any equitable or other claim to or interest in such share on the part of any other person."

There was no article corresponding to this in *Bradford Banking Co.* v. *Briggs* which purported to relieve the defendant company from the obligation to take notice of equities in relation to its shares. But there was such an article in *Rearden* v. *Provincial Bank of Ireland.* There article 8 of the articles of association of the bank provided as follows:

"No person shall be recognised by the Company as holding any share upon any trust, and the Company shall not be bound by or recognise any equitable, contingent, future or partial interest in any share, or any interest in any fractional part of a share or (except only as by these presents otherwise provided) any other right in respect of any share, except an absolute right to the entirety thereof in the registered holder."

Palles C.B. construed this article to mean that no notice of any trust shall be recognised by, or shall bind, the company (page 577). He did not think that it added anything to the effect of section 30 of the Companies Act, 1862.

This view of Palles C.B. was followed by Peterson J. in *Mackereth* v. *Wigan Coal and Iron Company Limited*,[6] which was cited to me by counsel for the plaintiff. In that case there was an article in exactly the same words as article 8 in *Rearden's* case, which purported to relieve the defendant company from the obligation to take notice of equities in relation to its shares. There was also an article conferring a lien in these words:

"The company shall have a first and paramount lien and charge on all the shares (not being fully paid up shares) registered in the name of a member (whether solely or jointly with others) for all moneys due to the company from him or his estate, either alone or jointly with any other person, whether a member or not, and whether such moneys are presently payable or not."

Peterson J. considered the two articles and section 27 of the Companies (Consolidation) Act,

1908, which corresponds to section 30 of the Companies Act, 1862. He followed the views of Palles C.B. as regards the effect of the latter section and the article conferring the lien. And he held that the defendant company could not disregard notice that a shareholder is not the beneficial owners of the shares held by him and that it could not assert its lien against the beneficial owner of the shares in respect of debts incurred by the shareholder after the notice. I accept the views of both Palles C.B. and Peterson J., and hold that article 4 of the articles of association in the present case does not add anything to the effect of section 102 of the Companies Ordinance, which is to prevent notice of equitable interests in shares from converting a company in which the shares are held into a trustee of its power of registration for the persons having the equitable interests.

I now turn to the contention of counsel for the defendant that the latter half of article 25 shows a clear intention to exclude the rule in *Hopkinson* v. *Rolt*. It reads as follows:

> "and such lien . . . . shall have priority over all debts, obligations, engagements and liabilities of such member to or with any other person, notwithstanding that any such last mentioned debt, obligation, engagement or liability was incurred or undertaken prior in date to any debt, obligation, engagement or liability to or with the Company in respect of which it may claim to exercise the lien conferred on it by this Article, and notwithstanding that the Company had full notice thereof."

It seems to me that these words expressly provide that the lien is to have priority in respect of a debt incurred after notice of a previous mortgage to another person. The question I have to consider now is whether *Bradford Banking Co.* v. *Briggs* supports the contention that it is possible to exclude the rule in *Hopkinson* v. *Rolt* by the articles. In *Bradford Banking Co.* v. *Briggs*, Lord Fitzgerald said "that the principle of *Hopkinson* v. *Rolt* governs the present case unless there is something in article 103 which prevents its application". But Lord Blackburn did not say so, although he considered the effect of article 103. He took the view that section 30 of the Companies Act, 1862, did not give the defendant company the power to disregard the ordinary rules of justice which included the rule in *Hopkinson* v. *Rolt*. He held that the legislature was competent to enact that a trading company should have the right to disregard the ordinary rules of justice, thereby implying that a trading company cannot, without statutory authority, give itself such a right in its articles. Lord Halsbury concurred in the views of Lord Blackburn. Therefore in spite of what was said by Lord Fitzgerald I hold that *Bradford Banking Co.* v. *Briggs* does not support the contention that it is possible for a company to exclude the rule in *Hopkinson* v. *Rolt* by its articles.

In my opinion, the articles of association of a company constitute a contract only so far as concerns the company and the members as members of the company. If therefore the company chooses to enter into normal commercial relations with its members it cannot rely on the articles to exempt it from ordinary rules of justice. In other words, the articles do not apply to such business transactions between the company in its capacity as a trader and its members as are capable of being transacted between the company and non-members, such as lending money on security; and the articles cannot interfere with the application of principles of equity to the equitable interests of non-members. I hold, therefore, that the latter half of article 25, which is set out above, is ineffective.

I must now deal with the case of *New London and Brazilian Bank* v. *Brocklebank*,[7] which was cited by counsel for the defendant company. There trustees were registered holders of shares in a limited banking company and it was held that the company's lien for a debt due from one of the trustees to the company prevailed over the interest of the *cestuis que trust*. It seems to me that in that case the company had no notice that the registered holders held the shares as trustees and, therefore, the case is not in point.

The last contention of counsel for the defendant is that the lien came into existence at the same time as the shares and was one of the terms on which the shares were held, and that the plaintiff cannot repudiate the terms upon which the shares were acquired by Lam. This contention is based on what was said by Jessel M.R. and Lindley L.J. in *New London and Brazilian Bank* v. *Brocklebank*. All I need say is this. The same argument was presented to the House of Lords in *Bradford Banking Co.* v. *Briggs*. In that case counsel for the respondents argued as follows: the shareholder cannot by any proceeding or device alter the nature of the property or derogate from the rights created therein at the time when the property itself was created; the appellants' claim does derogate from and is inconsistent with such rights; the bargain is that the company shall have a first lien; the lien is not only first, it is permanent; no dealings with third parties can affect the contract; section 30 of the Companies Act, 1862, makes the notices given by the appellants ineffectual for the purpose of giving priority to the appellants' advances. The House of Lords did not accept this argument. I must therefore reject the contention of counsel for the defendant.

For the above reasons I come to the conclusion that the defendant company is not entitled

to disregard notice of the equitable mortgage of shares in the defendant company made by Lam, the registered holder, in favour of the plaintiff, and to claim priority under its articles for its lien on the shares in respect of a debt incurred by the registered holder after the notice.

I accordingly declare that by virtue of the deposit of the certificates of 450 shares with the plaintiff by Lam, the plaintiff was an equitable mortgagee of the shares. I also declare that as regards the certificate of 225 shares deposited with the plaintiff on the 2nd February, 1957, the plaintiff's equitable mortgage ranked in priority to the defendant's lien in respect of Lam's debt under his guarantee of the 4th November, 1959, and any other debt incurred by Lam after the notice of the 2nd February, 1957. I order the defendant to account for the proceeds of sale of the 225 shares and bonus shares and dividends relating thereto. I order that an account be taken of what is due to the plaintiff for principal and interest on the equitable mortgage. And I order the defendant to pay the plaintiff the costs of this action.

*Order accordingly.*

Solicitors: *R. C. H. Lim & Co.; Rodyk & Davidson.*

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## FLINTER v. IDRIS

**[O.C.J. (Winslow J.) April 17, 1965]**

**[Singapore — Suit No. 516 of 1964]**

*Bill of sale — Registration — Want of — Ownership in car transferred to nominee.*

*Conversion — Registered owner of car — Car transferred under moneylending transaction — Registration with registrar of vehicle — Title.*

In 1961 the plaintiff through the good offices of one *C* obtained $4,000 from *K* Company which the plaintiff thought was a loan to be repaid with interest over the next 12 months. The plaintiff signed certain documents most of which were blank and got his assistant, the defendant also to execute certain documents transferring the plaintiff's car to the defendant as his nominee as security for the loan. The plaintiff sued the defendant for damages for conversion of the car by the defendant in 1964 to his own use.

**Held:** (1) the document of sale of the plaintiff's car to the company was not registered as a bill of sale and was accordingly unenforceable under the Bills of Sale Ordinance. The car accordingly remained the property of the plaintiff throughout;

(2) the defendant became the registered owner under a moneylending transaction which the *K* Company was not licensed to transact and which was therefore clearly illegal. Registration with the registrar of vehicles does not confer absolute ownership and cannot create an indefeasible title in the defendant.

*Cases referred to:—*

(1) *Gladys Nugawela* v. *Soon Teck Finance Co.* [1960] M.L.J. 302.

(2) *Palaniappa Chettiar* v. *Arunasalam Chettiar* [1962] M.L.J. 143, P.C.

(3) *Sajan Singh* v. *Sardara Ali* [1960] M.L.J. 52, P.C.

CIVIL SUIT.

*D. G. Ironside* for the plaintiff.

*Dennis Lee* for the respondent.

*Cur. Adv. Vult.*

**Winslow J.:** In this case the plaintiff, Dr. Jack Flinter, was, in early 1961, desperately in need of a sum of $4,000. Through the good offices of one Joseph Chee, apparently a ship's chandler, he obtained $4,000 from Messrs. Kian Ann Co. Ltd. (hereinafter called "the company") which he thought was a loan to be repaid with interest over the next 12 months. He says he signed documents most of which were blank except for certain printed words of no great significance and got his assistant, a dresser, the defendant, also to execute a document or documents which the plaintiff took to be documents of transfer of his own car No. SU. 63 into the defendant's name as his nominee. The plaintiff denied that he knew anything about the nature of any of the documents involved in the transaction save that he admitted knowing that he was obtaining the loan in question against the security of his car which the lender had asked him to transfer to the defendant as his nominee. He denied selling or purporting to sell the car outright to the lender as the car was then worth very much more than $4,000. In fact he signed blank documents almost blindly in his desperation to raise $4,000, trusting implicitly in Mr. Joseph Chee's recommendation of the company as a lender.

It may be difficult to imagine that a professional man like the plaintiiff could have been so naive as to do all the various things he says he did without being conscious of the nature of the transaction to which he was becoming a party. A borrower ordinarily signs an I.O.U. or a promissory note. If he signs anything else and knows that he is being asked to pledge his car to the lender as security one would expect him to take the elementary precaution of consulting not a ship's chandler but a lawyer.

It never occurred to him to express any surprise at what he says he was being asked to do viz. to transfer his car to someone else of his own choice. Now, a person transferring a car to another should know whether or not he is signing a document of transfer of some kind but the plaintiff says that he did not know what he was signing as the documents were more or less in blank as to the essential details nor, was he in the least concerned, as a result of his anxiety to obtain the loan of $4,000, about the nature of the documents he was signing.